## Before the Federal Communications Commission Washington, DC

In the Matter of	)	
	)	
Request for Review of the Decision of the	)	
Universal Service Administrator or Waiver by	)	
,	)	
Los Lunas School District	)	File No. SLD-630965
Los Lunas, New Mexico	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	50	

## REQUEST FOR REVIEW OR WAIVER

Los Lunas School District ("District"), by its undersigned representative, hereby requests that the Commission review and revise the service start date on the attached Form 486 Notification Letter for Form 486 Number 585801 (Exhibit A). The District erroneously entered the service start date on Form 486, as the submission date of the form. As a result of this error, the service start date was entered as March 30, 2009 instead of July 1, 2008 on the Form 486 Notification Letter, which subsequently led the SLD to deny payment for USAC Invoice ID# 1500908.

This is the second time that this comes before the Commission. In an FCC decision dated April 5, 2011, the Commission found the minor mistakes made by the District did not warrant the complete rejection of the District's application given the applicant made a procedural error and did not violate a Commission rule (Exhibit B). The District respectfully requests the Commission to direct USAC to revise the service start date to reflect July 1, 2008 on Form 471 application 630965 and for all funding requests included on this application.

#### I. ISSUE

The District erroneously entered the filing date as the service start date on the Form 486 Number 585801. As a result of this error, a number of District FRNs now reflect a service start date of March 30, 2009 instead of July 1, 2008. The District submitted a BEAR form (USAC Invoice ID# 1500908) for Funding Request Number 1742699, which was denied for services being delivered prior to the service start date on the Form 486 (Exhibit C). A copy of the Form 486 Notification Letter is attached to this appeal as Exhibit A as well as a copy of the BEAR Notification Letter, labeled Exhibit C.

#### II. FACTS

On March 17, 2009, the SLD approved funding for Los Lunas School District's Form 471 Application #630965. On the application, the reported service start date for all the Priority One services requested was July 1, 2008. Once the Funding Commitment Decision was received, the District then timely submitted its Form 486 on March 30, 2009. The District erroneously used the submission date of the Form 486 as the service start date, instead of the date services actually began. Subsequently, the District submitted a BEAR for payment on this FRN and it was denied by the SLD due to the error on the Form 486. The District had a number of FRNs affected by this Form 486 clerical error.

### III. DISCUSSION

A. The SLD should have seen and questioned the service start date error.

The SLD issued the Form 486 Notification Letter on July 8, 2009. The Notification Letter lists the service start date as March 30, 2009, the date the District submitted the Form 486. At the issuance of the Form 486 Notification Letter the SLD should have immediately seen and questioned the date error, particularly since the Form 471 and Funding Commitment Decisions Letter both correctly list July 1, 2008 as the service start date. Had the SLD questioned the service start date on the Form 486, the District would have had an opportunity to correct the error and would have not been denied payment on the BEAR submitted. But for this clerical error, the District has

received and paid for eligible services that have been funded and approved by the SLD. There has not been any indication that the District created any kind of waste, fraud or abuse upon the program.

B. Correcting the service start date error follows previously established FCC precedent.

The Federal Communications Commission (FCC) has clearly established that applicants making unintentional clerical errors regarding the reported service start date on the Form 486 should be provided with an opportunity to correct those errors. In the *Harvey Public Library District Order*, the applicant used the date the service provider had finished work as start date on its Form 486 instead of the actual service start date. The FCC found that had the applicant reported the correct date, all program rules would have been followed. Further, the Commission emphasized that although the applicant committed an "unintentional, clerical error when it listed the incorrect service start date on its FCC 486, it adhered to the other core program requirements." The Commission has repeatedly stressed the complicated nature of the E-rate program resulting in a high number of ministerial errors such as these, which do not result in waste, fraud or abuse.

Just as in the *Harvey Public Library District Order*, the clerical mistake made by Los Lunas School District on the Form 486, and subsequent denial of the BEAR, did not result in the District being out of compliance in regards to fundamental E-rate rules and guidelines. As a matter of fact these types of clerical errors are of the kind that another FCC order, *Bishop Perry*, was designed to protect. The District now understands that the service start date on the Form 486 is not the date in which the Form is submitted but rather the date that services are to begin. The District respectfully argues that the FCC has granted waivers based on clerical and ministerial deviations such as this resulting in procedural errors which do not violate any E-rate program rules, as is the case here.

<sup>&</sup>lt;sup>1</sup> Request for Review and/or Waiver by Harvey Public Library District, Schools and Libraries Universal Service Support Mechanism, File No. SLD-307716, CC Docket No. 02-6, Order, DA 08-2365 (Wireline Comp. Bur. 2008), para.5.

Another FCC Order on point with the case at hand is the Glendale Unified School

District Order (Glendale Order). In the Glendale Order, the Commission ruled that
although the applicant had committed an unintentional clerical error when it listed the
incorrect service start date on its Form 486, it adhered to the core program requirements.<sup>2</sup>
The Commission notes that while strict adherence to processing standards are necessary
for the efficacious administration of the program, there are circumstances where such
adherence would conflict with the statutory goals mandated by Congress in furtherance of
advancing universal service to schools and libraries in most need of support.

As is the case for many district applicants across the country, Los Lunas is facing budgetary constraints. A loss of funding would result in a financial hardship for the District. Los Lunas School District requests an opportunity to submit a revised Form 486 at this time so that the District can seek reimbursement for the eligible services that have been delivered and paid for in regards to all of the FRNs located on the form 486 at issue.

#### C. Waiver of the Commission's rules is warranted in these circumstances

If the Commission agrees with USAC that the District is not entitled to correct the service start date for the funding requests on the above mentioned Form 486, then the District respectfully requests that the rule be waived. The Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular). In deciding whether to waive a rule, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1157, (D.C. Cir. 1969), affirmed by WAIT Radio v. FCC, 459 F.2d 1203 (D.C. Cir. 1972). In these circumstances, waiver is warranted, necessary, and especially appropriate.

<sup>&</sup>lt;sup>2</sup> Request for Review and/or Waiver by Glendale Unified School District, Schools and Libraries Universal Service Support Mechanism, File No. SLD-143548, CC Docket No. 02-6, Order, 21 FCC Rcd 1040 (Wireline Comp. Bur. 2006), para.5

Waiver is also warranted here because the failure to receive the amount of money committed to the District for these funding requests will cause the District economic hardship. The State of New Mexico is experiencing a record budget shortfall this year and, because of that, many school districts throughout the state, including the District, which serves an economically disadvantaged population, are not receiving the monies they anticipated from the state. Loss of funding from the Universal Service Fund combined with decreased state funding will adversely affect the District's technology resources, and the District will be forced to make very difficult decisions as to which programs it can no longer afford to fund.

Financially penalizing schools and libraries for procedural gaffes is counterproductive and antithetical to the ultimate goals of the E-rate program. The *Bishop Perry Order* specifies that the denial of funding requests inflicts undue hardship on an applicant whose clerical/ministerial error was procedural rather than substantive and where there is no evidence of waste fraud or abuse. Furthermore, the Order clearly asserts that rigid adherence to application procedures does not further the purpose of the E-rate program, nor serve the public interest. The clerical error committed by the District on its Form 486 was inadvertent, not unreasonable and, most certainly, does not constitute waste, fraud or abuse. Moreover, the clerical error does not result in the District receiving more funding than it requested. To deny funding to the District in these circumstances would result in exactly the kind of financial and educational hardship that the *Bishop Perry Order* was designed to prevent. For these and all of the other reasons previously discussed, a waiver of the rules is warranted.

4 Ibid.

<sup>&</sup>lt;sup>3</sup> See Bishop Perry Order at 5321, para. 11.

### IV. CONCLUSION

Accordingly, Los Lunas School District respectfully requests that the Commission direct USAC to allow the District to resubmit reimbursement paperwork and correct the Form 486 to reflect the correct service start date of July 1, 2008 for all of the funding requests originally included on that form (486 Number 585801).

Respectfully,

**Ron Williams** 

Assistant Superintendent of Operations

Los Lunas School District

PO Drawer 1300

Los Lunas, NM 87031 Phone: (505) 866-8323

Fax: (505) 866-8297

E-mail: rwilliams@llschools.net

# **Exhibit A**

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Tothick



FINANCE Division

FORM 486 NOTIFICATION LETTER (Funding Year 2008: 07/01/2008 - 06/30/2009)

July 8, 2009

RECEIVED

Mario Guggino LOS LUNAS SCHOOL DISTRICT 119 LUNA AVE LOS LUNAS, NM 87031

JUL 15 2009

SUPERINTENDENT'S OFFICE

Re: Form 486 Application Number: 585801

Applicant's Form 486 Identifier: LLS\_62609b

This letter is to notify you that the Universal Service Administrative Company (USAC) has received and accepted an FCC Form 486, Receipt of Service Confirmation Form, from you. This notification is to confirm the information that you provided. This information is being shared with the service provider whose SPIN you identified on each Funding Request Number (FRN).

You may be receiving this letter to revise or correct a previous Form 486 Notification Letter. The information contained in this letter supersedes any previous notification you may have received, including, but not limited to, a previously adjusted Service Start Date or previously reduced funding commitment.

#### NEXT STEPS

Discuss with your service provider whether you would like discounts on your bills or to pay your bills in full and be reimbursed for discounts.

Invoice USAC before the invoice deadline using the applicant invoice (BEAR Form - FCC Form 472) for reimbursements after paying the bills in full or the service provider invoice (SPI Form - FCC Form 474) for discounts. Whichever method you choose, you must pay your non-discount portion, as stated in Program rules. Program rules also require that participants maintain all documentation for at least five years after delivery of discount service.

#### TO APPEAL THE SERVICE START DATE/FUNDING COMMITMENT CHANGE DECISION

If you wish to appeal the Service Start Date change(s) and/or funding commitment adjustment(s) indicated in this letter, your appeal must be received by USAC or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

 Include the name, address, telephone number, fax number, and (if available) email address for the person who can most readily discuss this appeal with us. 2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:

appellant name,

- applicant or service provider name, if different than appellant, applicant BEN and service provider SPIN, Form 486 Number 585801 and FRN(s) as assigned by USAC, - "Form 486 Notification Letter for Funding Year 2008", AND - the exact text or the decision that you are appealing.
- 3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation
- If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by the USAC s decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by the USAC s decision.
- Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to appeals@sl.universalservice.org. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal Schools and Libraries Division - Correspondence Unit 100 South Jefferson Road P.O. Box 902 Whippany, NJ 07981

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington DC 20554 Washington, DC 20554.

A guide to the data reported in our letter reports is posted in the Reference Area of our website. Complete Program information, including invoice deadlines is also posted on our website. You may also contact our Client Service Bureau by email using the "Submit a Question" link on our website, toll-free by fax at 1-888-276-8736, or toll-free by phone at 1-888-203-8100.

Schools and Libraries Division Universal Service Administrative Company

#### FORM 486 NOTIFICATION LETTER REPORT (Funding Year 2008)

Funding Request Number: 1742306

Form 471 Application Number: 630965 Service Provider Name: Qwest Communications Company, LLC Service Provider Identification Number: 143001157 Billing Account Number: 65507485 Service Start Date: 03/30/2009

Funding Request Number: 1742483 Form 471 Application Number: 630965

Service Provider Name: Owest Corporation Service Provider Identification Number: 143005231

Billing Account Number: 505-D08-7019-019 Service Start Date: 03/30/2009

Funding Request Number: 1742699
Form 471 Application Number: 630965
Service Provider Name: Owest Corporation
Service Provider Identification Number: 143005231
Billing Account Number: N/A
Service Start Date: 03/30/2009

# **Exhibit B**



# Federal Communications Commission Washington, D.C. 20554

# Memo

To: Walter Gibson

Los Lunas School District

From: Gina Spade, Deputy Chief

Telecommunications Access Policy Division

Wireline Competition Bureau

Date: April 5, 2011

**Re:** DA 11-533, released March 22, 2011

Please find accompanying this memo the Commission's decision on your request for review. The accompanying decision may be referenced in the future by its proceeding number and release date: DA 11-533, March 22, 2011.

If the Commission has granted your request for review, please contact the Universal Service Administrative Company (USAC) at 888-203-8100 for more information regarding your application. In addition, once USAC has reviewed your application at issue in the attached order, you will receive a revised funding commitment decision letter.

## Before the Federal Communications Commission Washington, DC 20554

In the Matter of	)	
	)	
Requests for Review and/or Waiver of Decisions	; )	
of the Universal Service Administrator by	)	
Barrow County School District	)	File Nos. SLD-681012, et al.
Ellijay, Georgia, et al.	į	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	ý	00 200
*	ORDER	

Adopted: March 22, 2011 Released: March 22, 2011

By the Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

- In this order, we grant six appeals of decisions by the Universal Service Administrative Company (USAC) that reduce or deny funding from the schools and libraries universal service support program (also known as the E-rate program) for various funding years.<sup>1</sup> USAC reduced or denied funding based on the service start date information provided on the FCC Form 486 submitted by the applicants.
- 2. The applicants affected by the USAC decisions state that they submitted the incorrect service start date when filing FCC Forms 486.<sup>2</sup> As the Wireline Competition Bureau found in Glendale Unified School District, minor mistakes such as this do not warrant the complete rejection of these applications given that the applicants made a procedural error and did not violate a Commission rule.<sup>3</sup> Therefore, we find good cause to grant the appeals and remand the underlying applications to USAC for further action consistent with this order. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of each application and issue an award or a denial based on a

<sup>&</sup>lt;sup>1</sup> See Appendix. In this order, we use the term "appeals" to generally refer to requests for review or waiver that are related to decisions issued by USAC. Section 54.719(c) of the Commission's rules provides that any person aggreeved by an action taken by a division of USAC may seek review from the Commission. 47 C.F.R. § 54.719(c) (2009).

<sup>&</sup>lt;sup>2</sup> Barrow County Request for Review for Review at 1, Duval County Request for Review at 1, Envision Request for Waiver at 1, Greater Albany Request for Review at 4, Lincoln County Request for Review at 1, and Los Lunas Request for Review at 1.

<sup>&</sup>lt;sup>3</sup> Request for Review and/or Waiver by Glendale Unified School District, Schools and Libraries Universal Service Support Mechanism, File No. SLD-143548, CC Docket No. 02-6, Order, 21 FCC Rcd 1040 (Wireline Comp. Bur. 2006); see also Request for Waiver by Harvey Public Library District, Schools and Libraries Universal Service Support Mechanism, File No. SLD-307716, CC Docket No. 02-6, Order, 23 FCC Rcd 15419 (Wireline Comp. Bur. 2008) (Glendale Unified School District) (both orders granting waiver requests when the applicants inadvertently listed the wrong service start date on their FCC Forms 486).

complete review and analysis no later than 90 calendar days from release date of this order. In addition, we also find good cause to waive section 54.720 of the Commission's rules for Greater Albany and Lincoln County. Although Greater Albany's appeal was filed late, the district filed the appeal as soon they received actual notice of the denial. Lincoln County's appeal was only two days late.

- 3. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), the Requests for Review and/or Request for Waiver filed by the petitioners as listed in the appendices ARE GRANTED and the applications ARE REMANDED to USAC for further consideration in accordance with the terms of this order.
- 4. IT IS FURTHERED ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that waivers of section 54.720 of the Commission's rules, 47 C.F.R. § 54.720, ARE GRANTED to Greater Albany Public Schools and Lincoln County School District.

FEDERAL COMMUNICATIONS COMMISSION

Gina M. Spade
Deputy Chief
Telecommunications Access Policy Division
Wireline Competition Bureau

<sup>&</sup>lt;sup>4</sup> In performing a complete review and analysis of each underlying application, USAC shall either grant the underlying application before it or, if denying the application, provide the applicant with all grounds for denial.

<sup>&</sup>lt;sup>5</sup> Specifically, section 54.720 of the Commission's rules provides parties with 60 days to appeal a decision by USAC to either USAC or the Commission. 47 C.F.R. § 54.720 (2009).

<sup>&</sup>lt;sup>6</sup> Request for Review filed by Greater Albany at 4. See Letter from USAC, Schools and Libraries, to Paul Holt, Greater Albany Public Schools (dated Oct. 31, 2007) (Form 486 Notification Letter).

<sup>&</sup>lt;sup>7</sup> Request for Review at 1. See Letter from USAC, Schools and Libraries, to Danny Dailey, Lincoln County School District (dated May 17, 2007) (Administrator's Decision on Appeal).

# APPENDIX

Applicant	Application Number	Funding Year	Date Appeal Filed
Barrow County School District Ellijay, Georgia	681012	2009	2/1/2011
Duval County Public Schools Jacksonville, Florida	521703	2006	11/10/2008
Envision Schools - Consortium San Francisco, California	571959	2007	12/29/2007
Greater Albany Public Schools Albany, Oregon	549884	2007	11/3/2008
Lincoln County School District Hamlin, West Virginia	477221	2005	6/13/2007
Los Lunas School District Los Lunas, New Mexico	619387	2008	9/13/2010

# **Exhibit C**





#### Form 472 (BEAR) Notification Letter

July 8, 2011

Barbara Molnar Owest Corporation C/O Qwest USF ERATE Team 1600 7th Ave., Room 506 Seattle, WA 98191

Re.

Invoice Number - as assigned by USAC: 1500908 Service Provider Identification Number: 143005231 Reimbursement Form Number: LL08-47207-QW-IA Billed Entity Number: 143243

Mario Guggino LOS LUNAS SCHOOL DISTRICT 119 LUNA AVE PO DRAWER 1300 LOS LUNAS, NM 87031

> Preferred Mode of Contact: E-mail at mguggino@llschools.net Total Amount of Reimbursement Approved for Payment: \$0.00

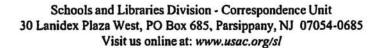
This letter is your notification that the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has processed an FCC Form 472, "Billed Entity Applicant Reimbursement (BEAR)" Form from the above named applicant listing you as the service provider. USAC has committed to reimburse the discounted portion of the cost of eligible services provided to eligible entities pursuant to one or more FCC Forms 471, "Description of Services Ordered and Certification Form".

In certain instances, a line may not have been paid. Review the BEAR Letter Applicant Reimbursement Report (Report) following this letter for the reason(s) this may have occurred. For more information about lines that have not been paid, see the explanation of Invoice Error Codes in Step 9 on our website. Work with the applicant (your customer) to correct any errors. Once corrected, your customer may submit a new BEAR to request reimbursement for any unpaid lines.

We recommend using the BEAR Online tool from the Apply Online area or Required Forms section of our website for additional submissions. If a new BEAR cannot be submitted before the invoice deadline passes, you or your customer may submit a request for a deadline extension. (See "Invoice Deadlines and Extension Requests" posted in the SLD section of our website for more information.)

Pursuant to the Federal Communication Commission's (FCC) Second Report and Order and Further Notice of Proposed Rulemaking (FCC 03-101, released April 29, 2003), you must remit the amount shown as "Total Amount of Reimbursement Approved for Payment" above to your customer no later than 20 days after receipt of payment of the approved discounts from USAC. You also agreed not to tender or make use of the payment of the approved discounts issued by USAC to you prior to remitting the discount to your customer (See BEAR Form, Block 4, Service Provider Acknowledgment).

The USAC check should be mailed to the service provider named above within 20 days of the date of this letter.



The maximum remaining amount available for each Funding Request Number (FRN) listed on the Report will be the original commitment less the amount approved herein for reimbursement and less any earlier disbursements to your customer.

PLEASE NOTE: The type of invoice form (BEAR or SPI) for the funding year is established by the receipt and approval of the first invoice submitted for the FRN for the funding year. For example, if we successfully process a BEAR for an FRN, we will not approve a SPI for that same FRN at a later time.

Please see the Guide to Letter Reports posted on our website for an explanation of the items listed in the attached Report.

COMPLETE PROGRAM INFORMATION is posted on our website. You may also contact our Client Service Bureau using the "Submit a Question" link on our website, toll-free by fax at 1-888-276-8736 or toll-free by phone at 1-888-203-8100.

Schools and Libraries Division Universal Service Administrative Company

CC: LOS LUNAS SCHOOL DISTRICT

### BEAR NOTIFICATION LETTER APPLICANT REIMBURSEMENT REPORT



Form 471 Application Number: 630965
Funding Request Number: 1742699
Funding Year 2008: 07/01/2008 - 06/30/2009
Contract Number: N/A
Funding Commitment Decision: \$334697.61
Reimbursement Amount for this FRN: \$0.00
Reimbursement Request Decision Explanation:
Billed Date Before 486 Service-Start Date;